II. REJECTION UNDER 35 U.S.C. § 103(a)

Claims 1-17 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 4,891,223 ("Ambegaonkar *et al.*"). The Examiner, has acknowledged that Ambegaonkar *et al.* do not disclose that the formulation averts an undesirable pharmacokinetic interaction. However, the Office Action alleges that since a controlled released drug slowly releases the drug into the system it may inherently avert undesirable pharmacokinetic drug interaction between the drug and concomitant drug. To the extent the rejection is applicable to the amended set of claims, Applicants respectfully traverse the rejection.

As the Examiner is well aware, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Ambegaonkar *et al.* relate to a coating formulation for a bioactive substance that results in a first-order, fractional-order, zero-order, or biphasic release of a bioactive substance (*see*, column 1, lines 6-11, Ambegaonkar *et al.*). More particularly, Ambegaonkar *et al.* relate to a bioactive composition having a controlled, sustained release delivery pattern when contacted with a suitable surrounding media comprising (a) a bioactive material core, (b) a first coating enveloping the bioactive material core, and (c) a second coating enveloping the first coating, whereby when the composition is exposed to the surrounding media, the exposure will result in the controlled release of the bioactive material (*see*, column 19, lines 37, and column 20, line 12, Ambegaonkar *et al.*). The drug delivery system disclosed in Ambegaonkar *et al.* releases drugs continuously, preferably at a uniform rate.

Unlike the teachings of Ambegaonkar *et al.*, the drug delivery systems of the present invention release drugs at a specific time or a specific site in the digestive

tract. There is no teaching in Ambegaonkar *et al.* to release drugs at a specific time or a specific site in the digestive tract as is presently taught and claimed.

In the Advisory Action, the Examiner stated that column 19, lines 6-10 discloses that the coating provides for the minimization of food interaction. Thus, according to the Examiner, if the food and the drug are competing for the same enzyme, the coating on the drug does not effect the enzyme's reaction with the food. However, this is not a teaching or suggestion of the present invention. Ambegaonkar *et al.* do not teach or suggest that the coating provides for the minimization of pharmacokinetic interaction between a drug and concomitant drug(s), especially at a drug-metabolizing enzyme in the liver (or the like). As set forth at column 19, lines 6-10:

> The outer diffusion layer also provides the means to minimize the effect of other physiological variables in the GI tract such as pH, temperature, presence of enzyme, effect of food, GI fluid volume, etc.

It is clear from the above sentence, that one of ordinary skill in the art would understand that the cited art preparation can minimize the effect of food in the gastro-intestinal tract or the digestive enzyme in the gastro-intestinal tract. In contrast, the purpose of the claimed invention is averting the drug interaction at drug-metabolizing enzymes in, for example, the liver.

The present invention pertains to a novel means for averting undesirable pharmacokinetic (drug) interaction between a drug and concomitant drug(s) *in vivo* in humans (*see*, page 1, lines 8-11 of the specification). As the means of averting such undesirable drug interactions, the present invention provides a drug delivery system that controls the *in vivo* release time and/or the release site of the drug. At no point do Ambegaonkar *et al.* teach anything about a system to avert undesirable pharmacokinetic (drug) interaction. Further, there is no teaching in Ambegaonkar *et al.* to avert the undesirable pharmacokinetic (drug) interaction between a drug and concomitant drugs(s).

In view of Ambegaonkar *et al.*, there is simply no motivation for one of ordinary skill in the art to avert drug interaction by controlling the drug release time

and/or release site with drug delivery systems and methods as is presently taught and claimed.

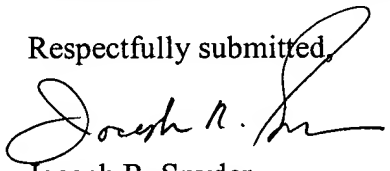
In view of the foregoing, Applicants respectfully request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

III. CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

Please cancel claims 1, 2, 5-6, 10-11 and 15 without prejudice.

Please enter new claims 18-21.